

REMARKS

This is a reply to the Office Action mailed May 5, 2003, with a shortened statutory response period of three (3) months from the mailing date. As this reply is filed before August 5, 2003, it is timely filed. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Applicants respectfully request reconsideration and allowance of the pending claims in view of the Remarks below.

A. Status of the Application

Claims 1-11, 13-33, and 35-41 are pending. The Examiner has rejected claims 1-3, 7-25 and 38-41 under 35 U.S.C. §102(b) as being anticipated by *Rosenbaum* (WO 95/13918). In addition, the Examiner has rejected claims 9-11 and 31-33 under 35 U.S.C. §103(a) as being unpatentable over *Rosenbaum* in further view of *Sudo* (EPO 0556034 A1). The Examiner has also rejected Claims 4-8, 13-16, 21, 26-30 and 35-37 over *Rosenbaum* in view of *Wilhoit* (US 5,928,740). Applicants traverse all of these rejections and request reconsideration of same.

B. Rejection under 35 U.S.C. § 102(b)

The present invention as set forth in independent Claim 1 is directed to a flowable materials container containing at least two components. The first component is selected from the group consisting of: (1) ethylene and α -olefin copolymers having a density of less than about 0.915 g/cc, and (2) ionomers. The first component is present in an amount from about 99% to about 55% by weight of the blend. The second component is selected from the group consisting of: (1) propylene containing polymers, (2) polybutene polymers, (3) polymethylpentene polymers, (4) cyclic olefin containing polymers and (5) bridged polycyclic hydrocarbon containing polymers. The second component is present in an amount by weight from about 45% to about 1%. Claim 1 also recites a list of material properties of a film made from the recited blends, including the modulus of elasticity, a sample creep at 120°C under 27 psi loading of less than or equal to 150% for a film having a thickness of from about 5 mils to about 15 mils, and that the film can be heat sealed into a container having seals wherein the seals remain intact when the container is autoclaved at 121°C for one hour.

1. Rosenbaum Does Not Anticipate the Present Invention

Rosenbaum discloses a multilayer film structure for medical products. The film has an RF sealable layer (14) which can include ultra low density polyethylene (ULDPE) and polypropylene copolymers including PPE. See Page 9, lines 11-13 and 19-35. However, there is no disclosure in the examples of *Rosenbaum*, set forth on Pages 19-23, of a film layer including more than 40% ULDPE.* As discussed above, the present invention **requires** that the first component -- which can be either (1) ethylene and α -olefin copolymers having a density of less than about 0.915 g/cc, or (2) ionomers -- be present in an amount from about 99% to about 55% by weight of the blend. Indeed, the most preferred amount of ULDPE disclosed in *Rosenbaum* is 45%, an amount far below that which is claimed in the present case. See Page 10, lines 31-36.

The Court of Appeals for the Federal Circuit has held that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a *single* prior art reference." *Verdegaal Bros v. Union Oil of California*, 814 F.2d 628, 631 (Fed. Cir. 1988) (*emphasis added*). It is evident the Examiner has not met this standard. Accordingly, it is clear the anticipation rejection of claims 1-3, 7-25 and 38-41 is in error and should be withdrawn.

C. Rejections under 35 U.S.C. § 103(a)

1. Rosenbaum In View of Sudo Does Not Render the Present Invention Obvious

Claims 9-11 and 31-33 stand rejected under 35 U.S.C. § 103(a) as unpatentable in light of *Rosenbaum* in view of *Sudo*. Accepting, *arguendo*, the Examiner's position that one skilled in the art could combine the disclosure of *Sudo* with the disclosure of *Rosenbaum*, the Examiner still has failed to present a *prima facie* case of obviousness. Specifically, *Sudo* is completely silent as to a first component which can be either (1) ethylene and α -olefin copolymers having a density of less than about 0.915 g/cc, or (2) ionomers that is present in an amount from about 99% to about 55% by weight of the blend. Moreover, as discussed above, *Rosenbaum* clearly

* Applicants also note for the purposes of 35 U.S.C. § 103(a) there is no suggestion in *Rosenbaum* for including the presently claimed first component in an amount from about 99% to about 55% by weight of the blend.

does not disclose or suggest such a blend. Accordingly, Applicants submit that Claim 9-11 and 31-33 are allowable over this combination of references.

2. Rosenbaum In View of Wilhoit Does Not Render Claims 4-8, 13-16, 21, 26-30 and 35-37 Obvious.

← Claims 4-8, 13-16, [21, 26-30 and 35-37] stand rejected under 35 U.S.C. §103(a) as unpatentable in light of *Rosenbaum* in view of *Wilhoit*. As pointed out in Applicants' previous response, *Wilhoit* discloses polymer blends for fabricating **heat shrinkable films**. This is in direct contradiction to the teachings of *Rosenbaum* which discloses medical films which must be autoclavable. In ascertaining the appropriateness of a particular reference as the basis for a rejection under §103, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984). Further, a proposed modification cannot change the principle of operation of a reference. See MPEP 2143.02. It is axiomatic the Patent Office has ignored both of these above-stated principles in its strained analysis to combine these two references.

no! The properties set forth in independent Claims 1 and 22, from which all of the above-rejected claims depend, would not be expected in films manufactured from the blends of *Wilhoit*. For example, as set forth in Table 1 of *Wilhoit*, all of the disclosed films manufactured from these polymer blends shrink in a significant amount at 90°C. In contrast, the films of the present invention demonstrate a sample creep at 120°C under 27 psi loading of less than or equal to 150% for a film having a thickness of from about 5 mils to about 15 mils, and the film can be heat sealed into a container having seals wherein the seals remain intact when the container is autoclaved at 121°C for one hour. It is doubtful the heat shrinkable films manufactured from the blends of *Wilhoit* would not meet these specific claim limitations. Moreover, one skilled in the art would not look to polymer blends for heat shrinkable films in order to develop improved polymer blends for use in autoclavable medical films.

Thus, Applicants submit the Examiner has failed to present a prima facie case of obviousness. Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

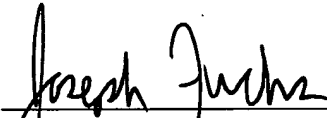
In view of the foregoing remarks, Applicants submit that all pending claims are in condition for allowance and respectfully request a notice of the same.

Respectfully submitted,

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BY



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